

Under the Motor Fuel Tax Law and the Environmental Impact Fee Law, no such tax and fee shall be imposed upon the importation or receipt of aviation fuels and kerosene at airports with over 300,000 operations per year, for years prior to 1991, and over 170,000 operations per year beginning in 1991, located in a city of more than 1,000,000 inhabitants for sale to or use by holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above. See 86 Ill. Adm. Code 500.202 and 501.200. (This is a GIL.)

February 15, 2001

Dear Xxxxx:

This letter is in response to your letter to Mr. Roland L. Marr dated November 7, 2000. Mr. Marr forwarded your letter to this office for a response. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

In your letter, you have stated and made inquiry as follows:

I am writing to you on behalf of COMPANY to request a clarification of 35 ILCS 505/2 in regards to the leaking underground storage tank ('LUST') tax and environmental impact fees. The issue is whether jet fuel sold to domestic or foreign commercial airlines is subject to the LUST tax and environmental impact fees when such fuel is delivered to leased facilities outside the CITY but are used in activities at LOCATION.

## **BACKGROUND**

COMPANY is a wholly-owned subsidiary of BUSINESS. Effective June 1, 2000, COMPANY became the new owners of the NAME Refinery. The refinery produces gasoline, diesel, jet fuel, kerosene and other fuel products. Such fuel is delivered to customers inside and outside the State of Illinois via pipeline, truck deliveries and barge.

COMPANY sells jet fuel to several commercial airline carriers that conduct activities at LOCATION. All jet fuel is delivered to these airline carriers at LOCATION via pipeline, with one exception. A portion of jet fuel purchased by a foreign commercial airline is delivered via pipeline to storage facilities in CITY2, Illinois. Title to the jet fuel passes to the foreign carrier upon delivery at the storage facilities in CITY2, Illinois, which are leased by the foreign carrier. The foreign carrier holds a foreign air carrier permit, but is

not a licensed receiver within the State of Illinois. In addition to the leased storage facilities in CITY2, the foreign carrier maintains storage facilities at LOCATION.

Jet fuel delivered to this foreign carrier's facilities in CITY2 is held in storage until such fuel is needed at LOCATION. At such time, the foreign carrier delivers the required fuel by either pipeline or truck to its facilities at the LOCATION. This fuel is then used to fuel international flights departing from LOCATION.

## DISCUSSION

35 ILCS 505/2 provides that a LUST tax of three-tenths of a cent per gallon on motor fuel is imposed upon the privilege of being a receiver in this State of fuel for sale or use. Fuel subject to the LUST is also subject to environmental impact fees of \$60 per 7,500 gallons sold or used in Illinois. Motor fuel is defined to include aviation fuels. However, an exemption applies for jet fuel used at specific facilities as follows:

However, no such tax shall be imposed upon the importation or receipt of aviation fuels and kerosene at airports with over 300,000 operations per year, for years prior to 1991, and over 170,000 operations per year beginning in 1991, located in a city of more than 1,000,000 inhabitants for sale to or use by holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, **or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above.** (Emphasis Added)

It does not appear that the above exemption requires that storage facilities owned or leased by permit holders must be within the LOCATION boundaries in order to qualify for such exemption **provided that such fuel is used in activities conducted at the airport.** This is the case with the foreign carrier at issue. All fuel is used at LOCATION even though some fuel is stored at leased facilities in CITY2, Illinois.

Previously, we contacted the Illinois Department of Revenue Motor Fuel Tax Division regarding whether jet fuel delivered to a foreign commercial airline carrier at its CITY2, Illinois storage facilities is subject to the LUST tax and environmental impact fees. We were informed that because such fuel was not delivered to and title did not pass at the LOCATION, such jet fuel was subject to these taxes. Therefore, we are requesting written guidance from the Department.

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Should you have any questions or require additional information, please contact me. You can reach me directly.

Under the Motor Fuel Tax Law, a tax of three-tenths of a cent per gallon is imposed upon the privilege of being a receiver in this State of fuel for sale or use. 35 ILCS 505/2a (1998 State Bar Edition). The tax shall be paid by the receiver in this State who first sells or uses fuel. In the case of a sale, the tax shall be stated as a separate item on the invoice. In addition, under the Environmental Impact Fee Law, all receivers of fuel are subject to an environmental impact fee of \$60 per 7,500

gallons of fuel, or an equivalent amount per fraction thereof, that is sold or used in Illinois. The fee shall be paid by the receiver in this State who first sells or uses the fuel. 415 ILCS 125/310 (1998 State Bar Edition).

A "receiver" is a person who either produces, refines, blends, compounds or manufactures fuel in this State, or transports fuel into this State or receives fuel transported to him from without the State or exports fuel out of this State, or who is engaged in distribution of fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant where he has active fuel bulk storage capacity of not less than 30,000 gallons. 35 ILCS 505/1.20 (1998 State Bar Edition); 415 ILCS 125/305 (1998 State Bar Edition). Section 1.12 of the Motor Fuel Tax Law provides, in part, that "received" shall be given its usual meaning including motor fuel produced, refined, prepared, distilled, manufactured or compounded at any refinery or other place in this State by any person, shall be deemed to be "received" by such person thereat when the same shall have been loaded (1) at such refinery or other place into tank cars, ships, barges, tank trucks, tank wagons or other types of transportation equipment, containers or facilities or (2) placed in any tank or other container from which any sales, use or deliveries are made directly, but not before. 35 ILCS 505/1.12 (1998 State Bar Edition).

Under the Motor Fuel Tax Law and the Environmental Impact Fee Law, however, no such tax and fee shall be imposed upon the importation or receipt of aviation fuels and kerosene at airports with over 300,000 operations per year, for years prior to 1991, and over 170,000 operations per year beginning in 1991, located in a city of more than 1,000,000 inhabitants for sale to or use by holders of certificates of public convenience and necessity or foreign air carrier permits, issued by the United States Department of Transportation, and their air carrier affiliates, or upon the importation or receipt of aviation fuels and kerosene at facilities owned or leased by those certificate or permit holders and used in their activities at an airport described above. 35 ILCS 505/2a (1998 State Bar Edition); 415 ILCS 125/310 (1998 State Bar Edition); 86 Ill. Adm. Code 500.202 and 501.200.

In general, when receivers deliver aviation fuel to facilities owned or leased by holders of certificates of public convenience and necessity or foreign air carrier permits and that aviation fuel is used in the certificate or permit holders' activities at LOCATION CITY, such transaction falls within the definition of the term "received" under Section 1.12 of the Motor Fuel Tax Law. This exemption applies, even though the fuel is delivered at qualifying facilities not located at LOCATON, as long as the fuel is used in a qualifying manner at LOCATION. Therefore, when receivers make such deliveries of aviation fuel, those deliveries are exempt from the tax imposed under Section 2a of the Motor Fuel Tax Law and the fee imposed under Section 310 of the Environmental Impact Fee Law.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Gina Roccaforte  
Associate Counsel

GR:msk  
cc: Roland L. Marr  
Enc.